

10/009.306

BB46457USA

**REMARKS**

Claims 58-75 are currently pending in the subject application and are presently under consideration. No claims have been amended herein. A listing of all pending claims is found at pages 2-6 of this Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments herein.

**I. Rejection of Claims 58-75 Under 35 U.S.C. §103(a)**

Claims 58-75 stand rejected unpatentable over Bosl *et al.* (U.S. 5,848,717) in view of Ohmi *et al.* (U.S. 5,762,217). It is respectfully requested that this rejection be withdrawn for at least the following reasons. Neither Bosl *et al.* nor Ohmi *et al.*, alone or in combination, teach or suggest every element of the subject claims.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) *must teach or suggest all the claim limitations*. See MPEP §706.02(j). The *teaching or suggestion to make the claimed combination* and the reasonable expectation of success *must both be found in the prior art and not based on applicant's disclosure*. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added).

The present invention relates generally to container closures, and in particular to container closures for pressurized products, such as pressurized beverages. Independent claim 58 sets forth "A container closure assembly, comprising a container mouth and a closure there for, the closure has a top portion with a plurality of segmented lugs depending there from, each of which has a plurality of vertical ridges, the closure comprising an engagement device configured for interlocking with a formation around the mouth to retain the closure on the mouth...the closure assembly physically interfaces

10/009,306

BB46457USA

only with a top surface and exterior surfaces of the container mouth" Independent claims 72 and 73 set forth similar aspects. Such aspects of independent claims 58, 72, and 73 are supported by the specification at, for example, Figures 1-7 and related text. As illustrated in Figures 1-7, the closure comprises a top portion having lug segments that depend there from, such that the closure is securely fitted over a rim of a container *without physically contacting an interior surface of the container*. Moreover, the claimed aspects facilitate decreasing production costs and device complexity by mitigating a need for a superfluous interface with an interior surface of a container rim. The proposed combination of references fails to teach or suggest each and every aspect set forth in the subject claims.

The Examiner, in the Final Office Action dated February 4, 2005, introduced Bosl *et al.* to teach the aspect of a closure assembly that interfaces with an exterior surface of a container mouth without contacting an interior surface of the container mouth. The Examiner then relies on Ohmi *et al.* to teach various other aspects of the subject independent claims. However, Ohmi *et al.* specifically teaches a container closure that interfaces with an interior surface of the container being sealed in order to effect sealing the container. For instance, "the top panel portion 3 has formed therein an inner ring 8 to be engaged with the inner circumferential side of the mouth portion 5 of the container whereby sealing is carried out in the inner circumferential side of the mouth portion 5 of the container to make the sealing more accurate." (Column 5, lines 62-67.) Thus, Ohmi *et al.* specifically teaches away from a reference that suggests employing a closure that does not contact an interior surface of a container mouth, such as Bosl *et al.*

In the Advisory Action dated April 14, 2005, the Examiner states that Ohmi *et al.* is not relied upon as a base reference, but rather is introduced to teach the aspect of a sealing ring and a segmented container wall in the respective rejections. However, as stated in the Reply to Final Office Action dated February 4, 2005, "*A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.*" *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984), emphasis added. Thus, the fact that the Examiner does not combine the interior sealing structure of Ohmi *et al.*, let alone the fact the Ohmi *et al.* is now a secondary reference, is irrelevant because Ohmi *et al.* specifically and solely describes a closure that relies on an abutment

10/009,306BB46457USA

to an interior surface of the container being sealed. It appears that the Examiner is picking and choosing elements from the cited references to meet applicant's claimed invention, while disregarding portions of Ohmi *et al.* that lead away from the claimed invention. A reference that teaches away from another reference may not be combined there with to form the basis of a 35 U.S.C. §103 rejection. (See, e.g., *In Re Grasselli*, 713 F.2d 731, 218 USPQ 769, 779, Fed. Cir. 1983; "It is improper to combine references where the references teach away from their combination.")

Moreover, as detailed above, the subject claims specifically set forth that the claimed container closure does *not* contact an interior surface of the container. Thus, the Examiner's attempt to introduce a new reference that discusses a container cap that contacts only the outside surface of its intended container while maintaining Ohmi *et al.* to suggest other claimed aspects of applicant's invention cannot be construed as anything other than impermissible hindsight. That is, the subject invention would not have been obvious to one ordinarily skilled in the art sufficient to impel him/her to do what the applicant has suggested, other than *via* employment of applicant's specification as a 20/20 hindsight-based road map to achieve the purported invention.

In view of the foregoing, it is respectfully submitted that neither Bosl *et al.* nor Ohmi *et al.*, alone or in combination, make obvious the present invention as set forth in independent claims 58, 72, and 73 (and claims 59-71, 74, and 75, which depend respectively there from). Accordingly, withdrawal of this rejection is respectfully requested.

## **II. Rejection of Claims 58-75 Under 35 U.S.C. §103(a)**

Claims 58-75 stand rejected unpatentable over Towns *et al.* (U.S. 5,368,178) in view of Ohmi *et al.* (U.S. 5,762,217). It is respectfully requested that this rejection be withdrawn for at least the following reasons. Neither Towns *et al.* nor Ohmi *et al.*, alone or in combination, teach or suggest every element of the subject claims.

The Examiner similarly introduced Towns *et al.* as suggesting a container closure that only contacts an exterior surface of a container, in response to amendment made in the Reply to Office Action dated August 12, 2004. As stated *supra* in Section I, Ohmi *et al.* teaches away from a container closure that contacts *only* an exterior surface of a container mouth, *without contacting an interior surface thereof*. Thus, Ohmi *et al.* is not

10/009,306

BB46457USA

combinable with Towns *et al.* since combining the references as suggested by the Examiner is a result of impermissibly employing 20/20 hindsight to use applicant's claimed invention as a roadmap to pick and choose elements from the subject references to reject the subject claims. Moreover, and as set forth above with regard to Section I, the Examiner is required to consider Ohmi *et al.* as a whole, including portions that would lead away from applicant's claimed invention, and is not permitted to simply disregard a portion of the reference that teaches away there from.

In view of the foregoing, it is readily apparent that neither Towns *et al.* nor Ohmi *et al.*, alone or in combination, make obvious the present invention as set forth in independent claims 58, 72, and 73 (and claims 59-71, 74, and 75, which depend respectively there from). Accordingly, withdrawal of this rejection is respectfully requested.

#### CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

AMIN & TUROCY, LLP



John M. Ling  
Reg. No. 51,216

AMIN & TUROCY, LLP  
24<sup>TH</sup> Floor, National City Center  
1900 E. 9<sup>TH</sup> Street  
Cleveland, Ohio 44114  
Telephone (216) 696-8730  
Facsimile (216) 696-8731